

FREDERICK COUNTY PLANNING COMMISSION

June 11, 2014

TITLE: Ramsburg Preliminary Subdivision Plan

FILE NUMBER: S-933, (AP #13629, APFO #13630 & FRO #13631)

REQUEST: Preliminary Plan Approval

The Applicant is requesting Preliminary Subdivision Plan and Adequate Public Facilities approval for 57 single family residential lots, on a 123.82-acre site.

(Continued from 5/14/2014 FCPC Meeting)

PROJECT INFORMATION:

LOCATION: Located on Roderick Road, south of MD 80, north of Sharon Drive.
TAX MAP/PARCEL: Tax Map 96, Parcel 69
ZONING: Residential (R-1)
COMP. PLAN: Rural Residential
PLANNING REGION: Urbana
WATER/SEWER: No Planned Service

APPLICANT/REPRESENTATIVES:

APPLICANT/OWNER: Urbana Farm, LLC.
SURVEYOR: Harris, Smariga & Assoc.
DEVELOPER: Matan Acquisitions, Inc.

STAFF: Tolson DeSa, Development Review Principal Planner II

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

Exhibit #1- Preliminary Plan Rendering
Exhibit #2- Ramsburg APFO Letter of Understanding

STAFF REPORT

ISSUE

The Applicant is requesting Preliminary Subdivision Plan and Adequate Public Facilities approval for 57 single family residential lots, on a 125.82-acre site.

BACKGROUND:

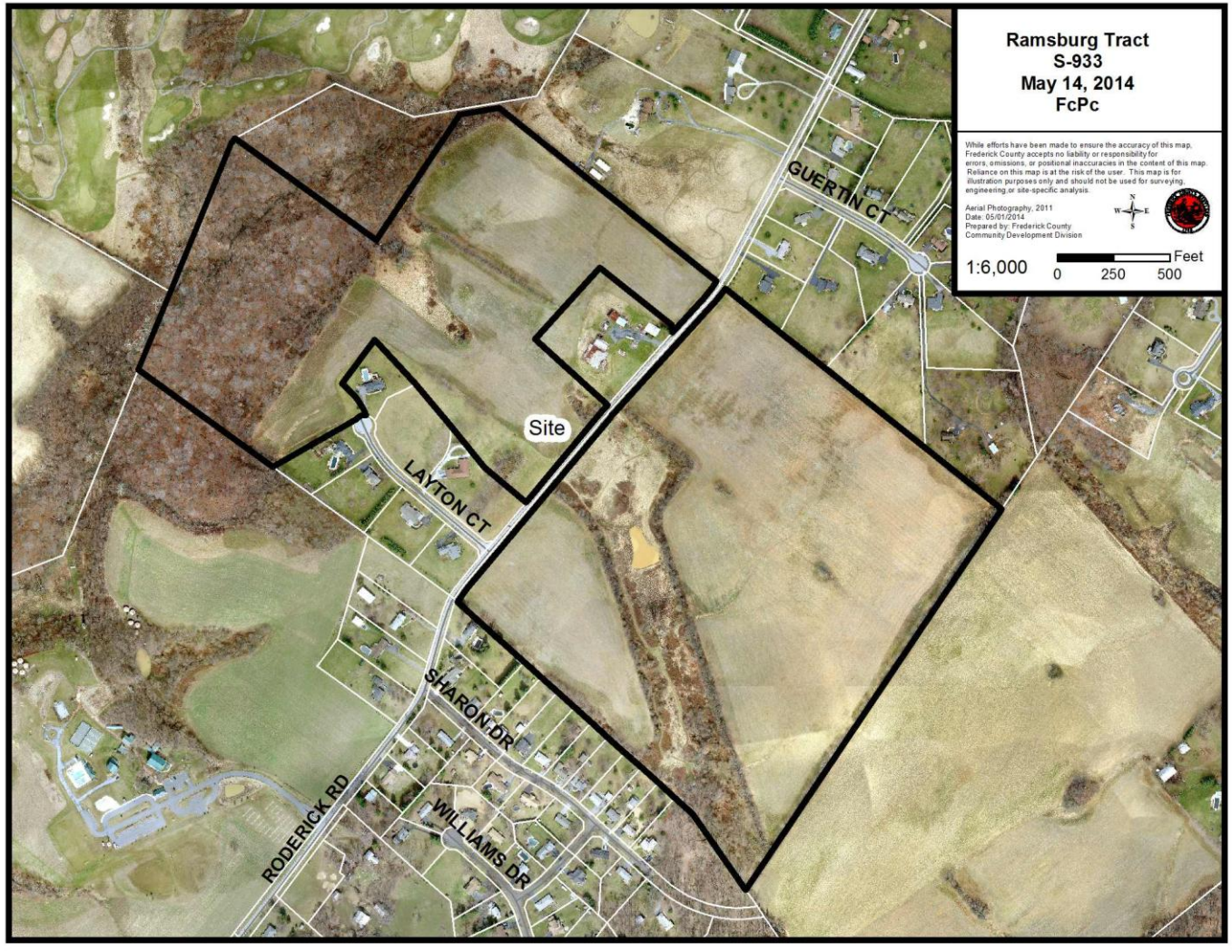
This property (Tax Map 96 Parcel 69) has been the subject of four previous subdivision applications;

- In June of 1988, a plat of public taking created a 73.31 acre Parcel 2, which is located on the east side of Roderick Road.
- In November of 1988, a 4.40 acre tract (Lot 7) was subdivided off of Parcel 1, which is a 65 acre tract located on the west side of Roderick Road. The 4.40 acre tract contains the original farmstead for the Ramsburg Property.
- In January of 1989, an addition plat was approved that added the 52.50 acre Parcel 1 to the 73.31 acre Parcel 2 for a combined 125.82 acres.
- On January 24, 1989, the Ramsburg Division Lots 1 & 3-8, Section 1 was approved. This subdivision created 7 lots approximately 1.5 acres in size.
- On January 9, 2013, the Frederick County Planning Commission (FCPC) granted non-binding approval of a sketch plan for the proposed 68 single family lot layout of the 125.82 acre (Parcel 1 & 2) Ramsburg property for the purpose of percolation testing only.
- On May 14, 2014, the Planning Commission voted to continue the case to the regularly scheduled June 11, 2014 meeting. There have been no alterations made to the plan from the May 14, 2014 submission.

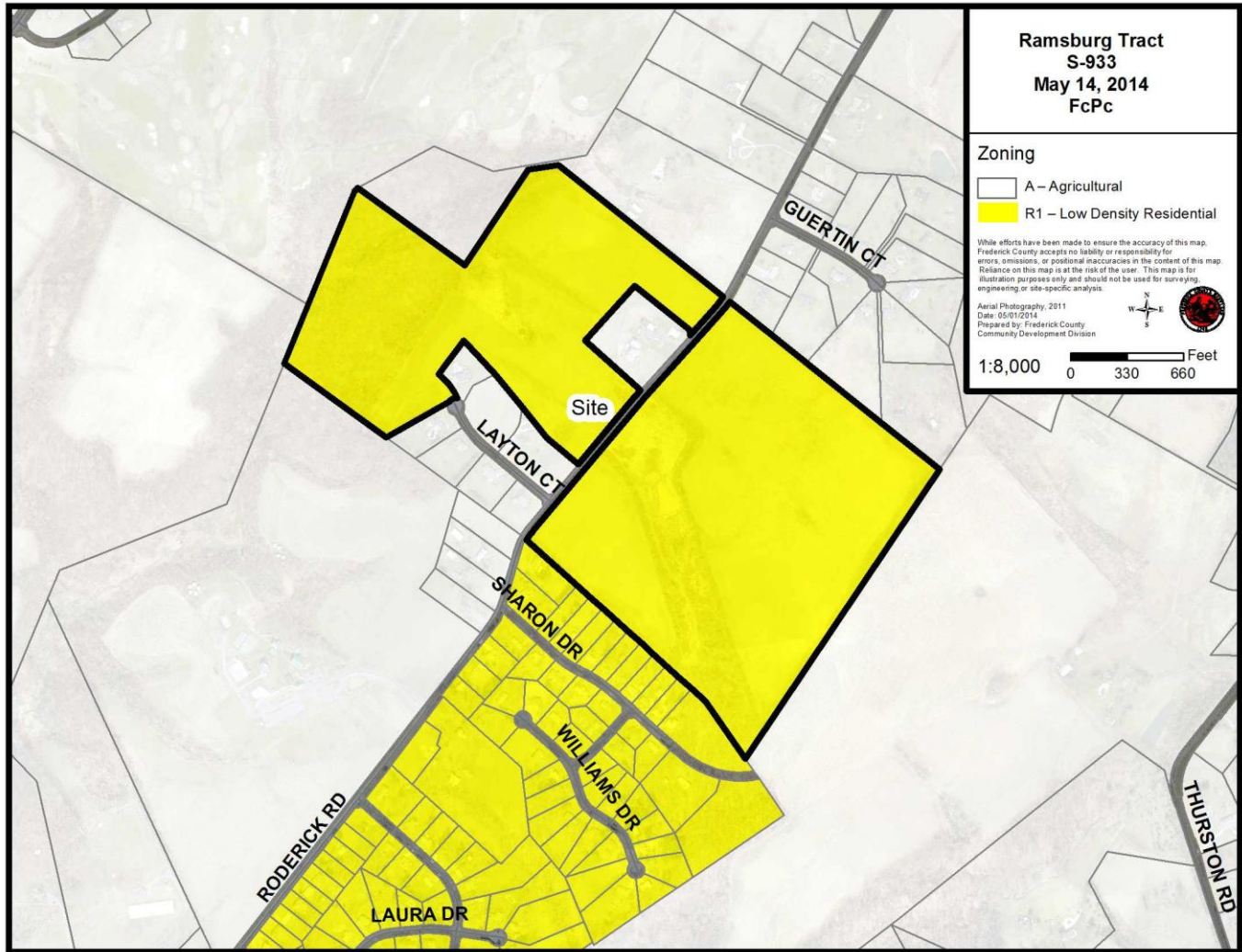
The Applicant is proposing a 57 single family lot subdivision on 125.82 acres to be served by individual wells and septic.

The project is comprised of two portions located on either side of Roderick Road. The eastern portion of the project proposes 34 single family lots and the western portion of the project proposes 23 lots. The site is zoned R1 residential and is surrounded by primarily large lot residential development on the north and south, existing cropland on the east, and the Worthington Manor Golf Course on the west. Areas of forest were identified on both sides of Roderick Road and were associated with forested corridors that extended off site along North Branch on the west and an unnamed tributary of Bennett Creek on the east. A total of 3.83 acres of existing forest was identified on the east side of Roderick Road and 19.24 acres of existing forest is located on the west side for a combined total of 23.07 acres. All of the existing forested areas within the sensitive areas must be retained. See Graphic #1.

Graphic #1: Site Aerial



Graphic #2: Zoning Map



ANALYSIS

A. SUBDIVISION REGULATION REQUIREMENTS

Review and approval of the proposed Preliminary Plan is subject to subdivision regulations as provided in Chapter 1-16 of the Frederick County Code.

1. **Land Requirements §1-16-217 (A):** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The subject property has a comprehensive plan designation of Rural Residential and is intended for low density residential development. The proposed land use and subdivision design complies with the Comprehensive Plan and meets Zoning Ordinance requirements for the R-1 Zoning District. See Graphic #2.

2. **Land Requirements §1-16-217 (B):** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The site design takes advantage of the site topography, wooded areas, stream valley and wetlands. The stream valley and wetlands will be maintained in existing forest areas within the proposed waterbody buffer. The existing forest will act as a buffer for these sensitive areas.

The street network and lot layout is designed to avoid stream crossings and provide increased connectivity throughout the proposed subdivision. The proposed subdivision on Parcel 1 will extend the existing Layton Court cul-de-sac and create another access onto Roderick Road (Mission Peak Way). Mission Peak Way is also proposed to connect to the adjacent property to the north in order to provide the possibility for additional connectivity in the future.

The proposed subdivision on Parcel 2 proposes two accesses onto Roderick Road in order to avoid a large band of forested wetlands, within the unnamed tributary of Bennett Creek. The northern Sundance Way provides a loop road design with a future connection to the adjacent parcel to the southeast. The southern Sandia Court is a 6-lot cul-de-sac, which borders the forested wetlands, and Bennett Creek tributary.

- 3. Preliminary Plan, Required Information §1-16-72 (B)(19)(a & b):** *Soil types: (a) Soils type(s) information shall be provided and appropriate boundaries shown on the plan. In the event that "wet soils" are located on or within 100 feet of a proposed residential subdivision, a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland. The soils delineation report shall be submitted for review prior to Planning Commission approval of the plan. The Division may waive this requirement if the "wet soils" are located within open space areas. (b) If residential lots are proposed within "wet soils" then a geotechnical report is required to be submitted by a professional engineer registered in the State of Maryland. A note shall be placed on the plan that all construction shall be in conformance with the geotechnical report.*

There are wetlands, streams, wet soils, flooding soils, and FEMA Floodplain on the property.

Parcel 1 to the west of Roderick Road contains a significant amount of FEMA floodplain from the Northern Branch of Bennett Creek. Parcel 1 also contains wet soils and flooding soils associated with Bennett Creek. All of these sensitive environmental features are proposed to be protected within the waterbody buffer and proposed Forest Resource Ordinance (FRO) easements.

The majority of the wetlands, wet soils and flooding soils are located within the stream valley of an unnamed tributary to Urbana Branch of Bennett Creek that run through the southern portion of the site, known as Parcel 2. All of these environmental features fall within the proposed FRO easements and waterbody buffer.

Based on the information submitted by the Applicant, the proposed lots are not impacted by any of the wet soils located on Parcel 1 or 2.

- 4. Road Access Requirements. Public Facilities §1-16-12 (B) (3) (b):** *For major subdivisions; Lots must access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.*

Roderick Road is a 20' wide asphalt roadway along the entire length of the primary direction of travel from the proposed Sandia Court north towards MD 80 (Fingerboard Road). Travelling southbound on Roderick Road, beginning approximately at the intersection of Roderick Road and Lynn Street, the roadway width narrows below 20' and is comprised of gravel. In meeting the requirements of section 1-16-12(B), it should be noted that the proposed subdivision is within the Urbana Volunteer Fire and Rescue service area which is most directly accessed via the 20' asphalt portion of Roderick Road and MD 80. All of the proposed internal subdivision streets will

meet the minimum 20 foot wide paved road surface requirement. Lots 16 and 17 on Parcel 1 will have a common driveway in order to save a specimen tree #42 (35" Chestnut Oak) and gain access to Lot 16, there are no other common driveways proposed. Lot access will meet Subdivision Regulations' road access requirements.

Intersection sight distance (ISD) has not yet been proven to be adequate for the Sundance Way access with Roderick Road. The applicant's engineer indicates that Roderick Road will need to be milled and regraded for about 150' to mitigate the failure. Prior to final signature approval of the Preliminary Plan, adequate ISD must be demonstrated by proposed sightline and regrading; with design details provided with the improvement plans.

5. Lot Size and Shape. §1-16-219: *The size, width, depth, shape, orientation and yards of lots shall not be less than specified in the zoning ordinance for the district within which the lots are located and shall be appropriate for the type of development, the use contemplated and future utilities.*

The proposed development is located on property zoned R-1 residential See Graphic #2. As provided in Section 1-19-6.100 of the Zoning Ordinance, the minimum design requirements in the R-1 residential zoning district are: 40,000 square foot minimum lot size, 100 foot minimum lot width, 40 foot front setback, 30 foot rear yard setback, and 10 foot side yard setback, 30 foot maximum structure height for single family residential development. .

All of the proposed lots meet the minimum 40,000 square foot (0.92 acres) lot size requirement within the R-1 zoning district. Lots range in size from 0.93 acres up to 3.95 acres, with an average lot size of approximately 1.56 acres. The required front, rear, and side setbacks are shown on the plan and meet the requirements of the Zoning Ordinance.

6. Other Street Requirements. Development on Dead End Streets §1-16-236 (K):

(K) *Subdivisions on cul-de-sac or dead end streets shall be permitted only if approved by the Planning Commission (or county staff) in accordance with this division, the Design Manual, and the following provisions, as applicable:*

(1) For proposed development on new or existing cul-de-sac or dead end street(s), except existing dead end streets described in subsection (2) below, the following requirements apply:

(a) Applicant must demonstrate the existence of site specific circumstances that make the design and development of a through street practically infeasible.

(b) In the AG and R-1 zoning district, cul-de-sac or dead end street(s) shall not exceed 1,800 feet in length and shall not serve more than 30 lots, dwelling units, or parcels. The Planning Commission may approve development of a greater number of lots and/or on a longer cul-de-sac or dead end street if the Planning Commission considers the individual property characteristics and the goals and principles of § 1-16-234 as set forth below in § 1-16-236(K)(1)(c).

§ 1-16-236(K)(1)(c). *the length of cul-de-sac or dead end street(s) may vary based on the density in the development section or land bay, property shape and size, topography, environmental constraints, lot size, unit types, and proposed land use. The density and length of cul-de-sac or dead end street(s) shall be reviewed by the Planning Commission and approved on a case by case basis.*

§ 1-16-234: *In designing highways, streets, roads, or common driveways, the subdivider shall be guided by the following principles.*

(A) Design to consider the context of the proposed land use, including the existing and proposed land development patterns on adjacent parcels.

(B) Design for opportunities to create interconnections between adjoining parcels.

(C) Provide for adequate vehicular and pedestrian access to all parcels.

- (D) Design local residential street systems to minimize through traffic movement and to discourage excessive speed.*
- (E) Provide reasonable direct access from local street systems to the primary transportation system.*
- (F) Local transportation systems and land development patterns shall not conflict with the efficiency of bordering arterial routes.*
- (G) Provide for safety, efficiency, and convenience of all users of the transportation system.*
- (H) Pedestrian-vehicular conflict points shall be minimized.*
- (I) Design to preserve, enhance, or incorporate natural, community, and historic resources.*
- (J) Be suitably located and designed/improved to accommodate prospective traffic, emergency service vehicles, and road maintenance equipment.*
- (K) Sidewalk, street design, right-of-way and paving shall be in accordance with these regulations and the County Design Manual.*

Due to environmental constraints including wet soils, flooding soils, existing site grades and existing forest as well as future street extension to adjoining tracts, the proposed subdivision includes cul-de-sacs and dead-end streets. Mission Peak Way is proposed as a 900 +/- foot long street that dead ends into a "T" turnaround. The stub street was extended to the northeastern property line in order to facilitate an inter-parcel connection if the Parrotte Tract was ever developed. Parcel 2 includes the proposed Sandia Court, which is a cul-de-sac that is approximately 450' long. Staff worked with the Applicant on eliminating a through movement design of Sandia Court in order to eliminate the need to cross the existing wetlands and stream valley with a 50' wide street section. The plan for Parcel 2 proposes a loop street system including Sundance Way, Verdugo Court and Wasatch View that dead-ends into a "T" turnaround at the southern property line. By definition, the proposed loop street system including Sundance Way, Verdugo Court and Wasatch View is an approximately +/- 3,750' long dead end street. However, the location and orientation of the environmental constraints on the site limit opportunities to increase the number of connections to Roderick Road. The proposed design does facilitate an inter-parcel connection with the adjacent lot to the southeast should it be developed in the future.

The proposed cul-de-sac streets do not exceed 1800 feet in length and do not serve more than 30 lots. The Sundance Way, Verdugo Court and Wasatch View street system is proposed to serve 28 lots, Sandia Court will serve 6 lots, and only 9 lots will be served by the dead end portion of Mission Peak Way.

If the Planning Commission finds that the proposed cul-de-sac and dead end streets are permitted then the proposed preliminary subdivision plan meets the requirements of §1-16-236.

- 7. *Water and Sewer Facilities. Public Facilities §1-16-12 (C):*** *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The property has a water and sewer classification of No Planned Service (NPS) and must utilize private septic areas and wells. Per §1-16-12 (C)(2), all wells and septic areas must be approved by the Health Department prior to final plat approval and lot recordation. The Health Department has reviewed and conditionally approved the proposed project.

OTHER APPLICABLE REGULATIONS

Stormwater Management – Chapter 1-15.2: Stormwater management will be provided in accordance with the current Maryland SWM Act of 2007. A SWM Concept plan has been submitted (AP# 13044) and approved.

APFO – Chapter 1-20: This subdivision is subject to meeting APFO requirements for schools and roads.

The following areas are addressed in the APFO Letter of Understanding (LOU) to be signed by the Applicant and the Planning Commission as a condition of approval of this preliminary plan. See attached Exhibit #2.

Schools: The Project is projected to generate 18 elementary school students, 9 middle school students and 13 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary, middle and high school levels.

At the middle school level, the current enrollment is at 128% of existing capacity at Urbana Middle School and therefore the School Construction Fee Option would not be allowable. However, §1-20-62(K) allows “actual capacity expected to be provided by new schools and school additions scheduled for construction in the first 2 years of the County Capital Improvement Program (“CIP”) to be considered in determining the enrollment percentage.

The Board of County Commissioners adopted the current CIP (FY 2014-2019) with a capacity expansion project for the Urbana Middle School (“the UMS Fitout Project”) within the first two years of the CIP (FY 15). Therefore, the UMS Fitout and its capacity may be considered in determining eligibility for the School Construction Fee Option. However, the CIP was adopted contingent on the Developer’s contribution of a total of \$1.6 million toward the funding of the UMS Fitout Project (the “CIP Contribution”). Therefore, that obligation is also being memorialized as part of this LOU to ensure timely payment of the Developer’s contribution as part of the CIP and to confirm funding of the UMS Fitout Project. To that end, in the event the Developer of the Urban Green Project has not yet paid the CIP Contribution to the County, the Developer shall pay the CIP Contribution to the County as a single lump sum payment in the amount of \$1.6 million dollars upon the earlier of:

- A. Prior to or simultaneously with the recordation of the first lot in this Project, or
- B. July 1, 2014.

The Developer must mitigate the inadequacies at all three school levels. The Developer has chosen the option to mitigate the school inadequacy at the elementary, middle and high school levels by paying the School Construction Fees under §1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in § 1-20-62 and under the other terms described above.

The School Construction Fees shall be paid at plat recordation based on the specific fees required by §1-20-62(E) at the time of plat recordation, per unit type and the school level(s) to be mitigated. If the \$1.6 million dollar CIP Contribution is paid in a timely fashion pursuant to the development of this Project or of the Urban Green Project, then it shall be credited toward the portion of the School Construction Fee attributable to the middle school; the portion of the School Construction Fee attributable to the high school and elementary school shall be paid in addition to the CIP Contribution. If the \$1.6 million CIP Contribution is paid in accordance with this Letter, then the Developer shall be entitled to an offset against the Development Impact Fee, if the Developer meets the requirements of Chapter 1-22 of the Frederick County Code, up to the amount of the CIP Contribution. The Developer shall be allowed to claim the credits and offsets noted above for only one development – Urban Green or this Project. The Developer may not claim the above-referenced credits and offsets for more than one project or development.

Roads: As proposed in the traffic impact analysis (TIA) performed by Wells and Associates dated June 12, 2013 and March 12, 2014, the Project will generate 51 am and 65 pm weekday peak hour driveway trips and is required to mitigate all road improvements that do not satisfy level of service standards per §1-20-31. In addition, the Developer is required to provide fair share contributions to existing escrow accounts per §1-20-12(H).

The study area for this small to moderately sized housing development included the site access points with Roderick Road and the MD 80 intersections with Roderick Road, I-270 southbound ramps and I-270 northbound ramps. All intersections were adequate in the 2018 build-out year except the two I-270 intersections which failed. Mitigation for these two intersections are described below (escrow conditions 1 – 3). The intersection of MD 80 and Roderick Road was found to be geometrically insufficient by the State Highway Administration with mitigation as follows:

The Developer shall construct or cause to construct SHA required turn lane intersection improvements at the intersection of MD 80 and Roderick Road ("Intersection Improvements"). The Intersection Improvements shall be guaranteed (issued SHA permit) prior to the recordation of the 12th residential lot and open to traffic prior to the recordation of the 24th residential lot. An escrow account shall be established for contributions by others for the purpose of surplus capacity reimbursement to the Developer.

In satisfaction of APFO requirements to provide fair share contributions to existing escrow accounts per §1-20-12(H), the Developer shall pay into County-held escrow accounts the following pro rata contributions:

1. I-270/MD 80 Southbound Ramps: Additional northbound right turn approach lane at the terminus of the southbound off-ramp and modify the southbound on-ramp to provide two (2) lanes, narrowing to one lane at its merge with the I-270 mainline, extending the I-270 acceleration lane. Contribute the appropriate pro-rata share (1.41% of \$200,000) to Existing Escrow Account No. 3920 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$2,820.
2. I-270/MD 80 Interchange: Add northbound to eastbound directional ramp. Contribute the appropriate pro-rata share (1.77% of \$2,000,000) to Existing Escrow Account No. 3579 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$35,400.
3. I-270/MD 80 Northbound Ramps: Restripe/reconstruct to provide an additional westbound through lane. Contribute the appropriate pro-rata share (1.77% of \$100,000) to Existing Escrow Account No. 3921 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,770.
4. MD 80/Sugarloaf Parkway Roundabout: Add additional eastbound and westbound approach lanes. Contribute the appropriate pro-rata share (3.00% of \$200,000) to Existing Escrow Account No. 3922 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$6,000.
5. Worthington Boulevard (MD 355) Relocated - south of MD 80. Contribute the appropriate pro-rata share (1.00 % of \$3,024,791) to Existing Escrow Account No. 3232 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$30,248.

6. MD 355/Sugarloaf Parkway Roundabout: Restripe the eastbound to provide a left turn lane and a left/through/right turn lane and provide a northbound right turn lane. Contribute the appropriate pro-rata share (1.00% of \$150,000) to Existing Escrow Account No. 3930 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,500

Therefore, prior to the recordation of the first residential plat, the Developer hereby agrees to pay \$77,738 to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

Public Water & Sewer: The Property has a water and sewer classification of No Planned Service (NPS) in the County's *Master Water and Sewer Plan*.

Period of Validity: The APFO approval is valid for four (4) years from the date of Commission approval; therefore, the APFO approval expires on June 11, 2018.

Forest Resource Ordinance – Chapter 1-21: A Preliminary FRO Plan has been submitted and is currently under review. The site contains 24.03 acres of forest, of which 9.27 acres is proposed to be cleared and 14.76 acres is proposed to be retained. An additional 19.67 acres of forest mitigation is required, most of which will be met by planting new forest in the environmentally sensitive areas on the site. Any remaining mitigation will likely be mitigated by purchasing banking credits. The site contains 49 specimen trees. All but one will be saved and protected in accordance with §1-21-40(B) of the Forest Resource Ordinance, which requires all nonhazardous specimen trees to be retained and protected. The one specimen tree to be removed is a 31.5 inch Black Locust that is located on proposed Lot 34. This tree is in very poor condition, having a hollow trunk and severe canopy damage. The poor condition of this tree does not meet the definition of a nonhazardous tree, therefore a modification from the FcPc is not required and its removal has been approved by Staff.

In order to facilitate the retention of the specimen trees on Lots 15, 16, and 17, several minor design tweaks are necessary.

1. The proposed well on Lot 18 must be shifted to allow a driveway to be constructed between trees #40 (31" Chestnut Oak) and #44 (40" Chestnut Oak).
2. A common driveway must be constructed to serve Lots 16 and 17 in order to avoid significant disturbance to tree # 42 (35" Chestnut Oak)

Summary of Agency Comments

Other Agency or Ordinance Requirements	Comment
Development Review Engineering (DRE):	Conditional Approval
Development Review Planning:	Hold. Address all agency comments as the plan proceeds through to completion.
State Highway Administration (SHA):	N/A
Div. of Utilities and Solid Waste Mngt. (DUSWM):	N/A
Health Dept.	Conditional Approval
Office of Life Safety	Approved
DPDR Traffic Engineering	Hold. Address ISD and all outstanding comments as the plan proceeds through to completion.
Historic Preservation	Approved

RECOMMENDATION

Staff has no objection to conditional approval of the Preliminary Plan.

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable Subdivision, Zoning, APFO, and FRO requirements if the Planning Commission approves the proposed cul-de-sac and dead end streets in accordance with 1-16-236(K). Should the FcPc grant approval of this application (S-933, AP 13629), including approval of the APFO (AP 13630), Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.
2. A Common driveway must be utilized to serve Lots 16 & 17 and must be constructed prior to lot recordation.
3. The purchasers of the common driveway lots (Lots 16 & 17) are to be notified of the responsibilities of maintaining the common driveway.
4. The Preliminary FRO plan must receive approval prior to the approval of the Preliminary subdivision plan. Prior to lot recordation, grading permit application, or building permit application (whichever is applied for first), a Final FRO plan must be submitted and receive approval, and FRO mitigation must be provided.
 - a. The proposed well on Lot 18 must be shifted to allow a driveway to be constructed between trees #40 (31" Chestnut Oak) and #44 (40" Chestnut Oak).
 - b. A common driveway must be constructed to serve Lots 16 and 17 in order to avoid significant disturbance to tree # 42 (35" Chestnut Oak).
5. Prior to final signature approval of the Preliminary Plan, adequate ISD at all access points onto Roderick Road must be demonstrated by proposed sightline and re-grading to the satisfaction of the Department of Planning and Development Review Transportation Engineer. Design details shall be provided with the improvement plans
6. The APFO approval is valid for four (4) years from the date of Commission approval; therefore, the APFO approval expires on June 11, 2018.
7. The Preliminary Plan approval is valid for the lesser of five (5) years from the date of FcPc approval, or the period of APFO approval (per §1-16-71(Q)). Therefore, the Preliminary Plan approval also expires on June 11, 2018.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE S-933 (AP 13629) with the conditions** listed in the staff report for the proposed Ramsburg preliminary plan, approval of the **APFO (AP 13630)**, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

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June 11, 2014
Page 12 of 17



**FREDERICK COUNTY GOVERNMENT
DIVISION OF COMMUNITY DEVELOPMENT**

Gary Hessong, Acting Division Director

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Lori L. Depies, CPA
County Manager

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Ramsburg Property

Preliminary Plan #S-933 AP #13630

In General: The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and Matan Acquisitions, Inc. (the "Developer"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Ramsburg Property Preliminary Plan (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 125.8 +/- acre parcel of land, which is zoned R-1, and located on the east side of Roderick Road, just south of MD 80. This APFO approval will be for the development of up to 58 single family detached residential lots, which is shown on the preliminary plan for the above-referenced Project, which was conditionally approved by the Commission on June 11, 2014.

Schools: The Project is projected to generate 18 elementary school students, 9 middle school students and 13 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary, middle and high school levels.

At the middle school level, the current enrollment is at 128% of existing capacity at Urbana Middle School and therefore the School Construction Fee Option would not be allowable. However, §1-20-62(K) allows "actual capacity expected to be provided by new schools and school additions scheduled for construction in the first 2 years of the County Capital Improvement Program ("CIP") to be considered in determining the enrollment percentage.

The Board of County Commissioners adopted the current CIP (FY 2014-2019) with a capacity expansion project for the Urbana Middle School ("the UMS Fitout Project") within the first two years of the CIP (FY 15). Therefore, the UMS Fitout and its capacity may be considered in determining eligibility for the School Construction Fee Option. However, the CIP was adopted contingent on the Developer's contribution of a total of \$1.6 million toward the funding of the UMS Fitout Project (the "CIP Contribution"). Therefore, that obligation is also being memorialized as part of this LOU to ensure timely payment of the Developer's contribution as part of the CIP and to confirm funding of the UMS Fitout Project. To that end, in the event the Developer of the Urban Green Project has not yet paid the CIP Contribution to the County, the Developer shall pay the CIP Contribution to the County as a single lump sum payment in the amount of \$1.6 million dollars upon the earlier of:

- A. Prior to or simultaneously with the recordation of the first lot in this Project, or
- B. July 1, 2014.

The Developer must mitigate the inadequacies at all three school levels. The Developer has chosen the option to mitigate the school inadequacy at the elementary, middle and high school levels by paying the School Construction Fees under §1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in § 1-20-62 and under the other terms described above.

The School Construction Fees shall be paid at plat recordation based on the specific fees required by §1-20-62(E) at the time of plat recordation, per unit type and the school level(s) to be mitigated. If the \$1.6 million dollar CIP Contribution is paid in a timely fashion pursuant to the development of this Project or of the Urban Green Project, then it shall be credited toward the portion of the School Construction Fee attributable to the middle school; the portion of the School Construction Fee attributable to the high school and elementary school shall be paid in addition to the CIP Contribution. If the \$1.6 million CIP Contribution is paid in accordance with this Letter, then the Developer shall be entitled to an offset against the Development Impact Fee, if the Developer meets the requirements of Chapter 1-22 of the Frederick County Code, up to the amount of the CIP Contribution. The Developer shall be allowed to claim the credits and offsets noted above for only one development – Urban Green or this Project. The Developer may not claim the above-referenced credits and offsets for more than one project or development.

Water and Sewer: The Property has a water and sewer classification of No Planned Service (NPS) in the County's *Master Water and Sewer Plan*.

Road Improvements: As proposed in the traffic impact analysis (TIA) performed by Wells and Associates dated June 12, 2013 and March 12, 2014, the Project will generate 51 am and 65 pm weekday peak hour driveway trips and is required to mitigate all road improvements that do not satisfy level of service standards per §1-20-31. In addition, the Developer is required to provide fair share contributions to existing escrow accounts per §1-20-12(H).

In full satisfaction of APFO requirements to mitigate site-generated trips per §1-20-31, the Developer shall construct or cause to construct SHA required turn lane intersection improvements at the intersection of MD 80 and Roderick Road ("Intersection Improvements"). The Intersection Improvements shall be guaranteed (issued SHA permit) prior to the recordation of the 12th residential lot and open to traffic prior to the recordation of the 24th residential lot. An

escrow account shall be established for contributions by others for the purpose of surplus capacity reimbursement to the Developer.

In the event that construction of the Intersection Improvements will require acquisition of public right-of-way from third party property owners, Developer shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of the County. In the event that the Developer has demonstrated to the County that it is unable to secure any such public right-of-way despite its commercially reasonable efforts to do so in a timely manner consistent with the construction of public infrastructure improvements, Developer may request the County or SHA to assist in the acquisition of the needed right-of-way at Developer's sole cost and expense. If the County or SHA does not acquire the necessary right of way within two years of the Developer's request to acquire, the Developer shall be permitted to make a contribution to the County, equal to the entire anticipated project development costs, which shall include but not be limited to costs for: design, engineering, right-of-way acquisition, management, inspection, etc. in lieu of constructing the Intersection Improvements. Upon payment of a contribution in the appropriate amount referenced in this paragraph, the Developer shall have satisfied its APFO obligation concerning the Intersection Improvements and may proceed with development of the Property beyond the recordation of the 12th or 24th residential lot, as the case may be.

In satisfaction of APFO requirements to provide fair share contributions to existing escrow accounts per §1-20-12(H), the Developer shall pay into County-held escrow accounts the following pro rata contributions:

1. I-270/MD 80 Southbound Ramps: Additional northbound right turn approach lane at the terminus of the southbound off-ramp and modify the southbound on-ramp to provide two (2) lanes, narrowing to one lane at its merge with the I-270 mainline, extending the I-270 acceleration lane. Contribute the appropriate pro-rata share (1.41% of \$200,000) to Existing Escrow Account No. 3920 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$2,820
2. I-270/MD 80 Interchange: Add northbound to eastbound directional ramp. Contribute the appropriate pro-rata share (1.77% of \$2,000,000) to Existing Escrow Account No. 3579 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$35,400
3. I-270/MD 80 Northbound Ramps: Restripe/reconstruct to provide an additional westbound through lane. Contribute the appropriate pro-rata share (1.77% of \$100,000) to Existing Escrow Account No. 3921 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,770
4. MD 80/Sugarloaf Parkway Roundabout: Add additional eastbound and westbound approach lanes. Contribute the appropriate pro-rata share (3.00% of \$200,000) to Existing Escrow Account No. 3922 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$6,000
5. Worthington Boulevard (MD 355) Relocated - south of MD 80. Contribute the appropriate pro-rata share (1.00 % of \$3,024,791) to Existing Escrow Account No. 3232 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$30,248
6. MD 355/Sugarloaf Parkway Roundabout: Restripe the eastbound to provide a left turn lane and a left/through/right turn lane and provide a northbound right turn lane. Contribute the appropriate pro-rata share (1.00% of \$150,000) to Existing Escrow


Account No. 3930 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,500

Therefore, prior to the recordation of the first residential plat, the Developer hereby agrees to pay \$77,738 to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

Period of Validity: The APFO approval is valid for four (4) years from the date of Commission approval; therefore, the APFO approval expires on June 11, 2018.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

DEVELOPER: Matan Acquisitions, Inc.

By:  _____ Date: 5/5/14
Mark C. Matan, President

FREDERICK COUNTY PLANNING COMMISSION:

By: _____ Date: _____
Robert Lawrence, Chair or William G. Hall, Secretary

ATTEST:

By: _____ Date: _____
Gary Hessong, Director, Permits & Inspections

Planner's Initials / Date _____

County Attorney's Office Initials / Date _____
(Approved as to legal form)